DOCUMENT RESUME

ED 204 899 EC 133 366

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TITLE Tension Among Laws: Implications for Exceptional Minority Students. Issue IV: "Social and Political Implications of Requests for Twelve Months Schooling for Minority Handicapped Students."
PUB DATE Feb 81
NOTE 22p.: Paper presented at The Council for Exceptional Children Conference on The Exceptional Black Child (New Orleans, LA, February, 1981, Session B-24).

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Disabilities: Elementary Secondary Education: *Extended School Year: *Legislation: *Minority Groups: *Student Needs

ABSTRACT

The paper examines legislation regarding the year round school model for minority handicapped students. Problems with the 12 month model are pointed out including an emphasis on the disabling characteristics of these students, lack of opportunities to learn in the community, and high costs. In addressing the need for 12 months of schooling for minority handicapped students, it is suggested that school districts develop and implement the Child Study Team concept, conduct inservice and training programs for all support personnel, review records of borderline educable mentally retarded students, and develop pilot models whereby borderline minority students are placed into alternative education classes. (SB)

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TENSION AMONG LAWS: IMPLICATIONS FOR EXCEPTIONAL MINORITY STUDENTS

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ISSUE IV

"SOCIAL AND POLITICAL IMPLICATIONS OF REQUESTS FOR TWELVE MONTHS OF SCHOOLING FOR MINORITY HANDICAPPED STUDENTS"

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EXCEPTIONAL BLACK CHILD CONFERENCE
February 15-17, 1981
New Orleans, La.

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SOCIAL AND POLITICAL IMPLICATIONS OF REQUESTS FOR TWELVE MONTHS OF SCHOOLING FOR MINORITY HANDICAPPED STUDENTS

Public education is a vehicle of society for carrying out a function which society has declared to be a desirable one - the education of all the children of all the people.

The Constitution of the United States is the basic law of the land. All statutes passed by congress or the state legislatures, ordinances of local government units, and rules and regulations of boards of education are subject to the provisions of the constitution of the United States. The Constitution covers a wide area of powers, duties, and limitations, but at no point does it refer expressly to education. Education is a state function under the tenth amendment, which provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states are reserved to the states respectively, or to the people.

There are few sections of the Constitution of the United States that find their way into the problems arising in the operation of schools. The sections that bear most intimately on the schools are those protecting the so-called inherent rights of individuals. It is the constitutional restrictions on the power of Congress and the states to encroach upon the rights of individuals that most frequently come before the courts for interpreta-

tion. The principle ones are Article I, Section 10, and the First, Fifth, and Fourteenth Amendments. It is under the Fourteenth Amendment that cases via litigation for the handicapped plaintiff have charged deprivation of the equal protection of the laws guaranteed by the Fourteenth Amendment, and judges and the courts are giving rulings in the areas they know the least about - education.

In January of 1978, five handicapped children and their parents started three class action lawsuits. The plaintiffs alleged that the defendants violated their children's constitutional and statutory rights by denying them a free publicly funded education in excess of 180 days. The trial in this matter demonstrated the important and difficult role the judiciary must play in the expanding field of educational law. For the minority handicapped student, the password is <u>beware</u>! lest we spark the return to special classes, special schools, and more segregation for blacks and legalized discrimination. The measure of attainment of the goal of education does not rest with the length of the school year alone, rather that accountability be noted in the time spent in schooling with appropriate related services, attaining the goals projected for an individualized appropriate education for each child.

In a court case in Georgia it was noted, at the time the Congress enacted the Education for All Handicapped Children Act (20 U.S.C. §§ 1401, et seq.), which realistically speaking both factually and legally supersedes Section 504 of the Vocational Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 794 (to the extent that this earlier legislation may have applied to elementary and secondary education), the Congress was fully cognizant of the fact the schools across the United States provided for a summer vacation and did not operate on a year-round basis. The Congress did not include any requirement in the new Act which expressly suggests the necessity or even the desirability of year-round schooling. To the contrary, the legislative history and the language of the Act itself strongly suggest that the purpose was to provide handicapped children (who had often been totally excluded from any educational services at all in the past) with, to the extent possible, a parity or equality of educational services vis-a-vis pupils generally -- namely educational and related services over the traditional nine month school year.

Faced with this undisputable absence of any express requirement in the Act for a longer school year for "handicapped" children than for children generally, plaintiffs attempted to argue that such a requirement can be "implied" from the provision which obligates defendants [the schools] to provide a handicapped child with "a free appropriate public education." See 20 U.S.C. §§ 1412(1). This was without merit for multiple reasons of law and fact, including the following:

(a) The term "free appropriate public education" is expressly defined by the act as having reference to those services which customarily are (i.e. "have been") provided and meet the standards of the State educational agency. 20 U.S.C. § 1401(18) (A) (B). The services which "have been provided", have been provided over a traditional nine month school year and has met the standards of the State Board of Education.

(b) The strained interpretation sought by plaintiffs was contrary to Congressional intent as well as the plain language of the Act for the reasons already stated.

(c) To deprive handicapped children, solely because of their handicap, of the educational and social benefits, as well as the personal pleasure, of the summer vacation made available to children generally, would be an obvious violation of Section 504 of the Rehabilitation Act of 1973 (if this prior legislation should be for any reason determined by the Court not to have been wholly superseded by the Education for All Handicapped Children Act of 1975) -- since Section 504 prohibits discrimination against handicapped children in federally funded programs generally.

(d) The summer break is educationally beneficial:

(i) because of the "battery recharge" phenomenon (students tend to get tired of school in the absence of vacations and year round schooling would cause their overall rate of progress to decrease since they need time off in the form of a vacation, whether handicapped or normal),

(ii) because it produces opportunities for the critically important process of informal (i.e. non-"school") education -- which is probably of no less significance on a person's total educational development than the formal (i.e. classroom) education he receives.

(iii) because it enhances transfer or generalization of school learned skills to another environment (a transfer which if it does not occur renders the "school" education pointless).

(e) There are no demonstrable educational advantages to year-round education which would clearly compensate for the educational and developmental injury, possibly quite irreparable, which would be inflicted upon handicapped children by its use (moreover an injury which would be inflicted in an arbitrarly discriminatory manner since so-called normal children would not be similarly punished).

The burden of proof which rested upon plaintiffs in this case was particularly heavy since being one step closer to complete institutionalization it was more rather than less "restrictive," which is contrary to the preference which the Act gives to the "least restrictive placement possible," or "mainstreaming" (i.e. treating the handicapped child as much as possible like the non-handicapped child. See 20 U.S.C. §§ 1412 (5) (B); 20 U.S.C. §§ 1414(a) (1) (C) (IV); 45 C.F.R. §§§ 121a, 500-552; John A. v. Hinson, U.S.D.C., N.D. Ga., No. C78-1717A. Moreover, appropriateness means only that when selecting one of the alternative educational programs possible for a given child, the "educational vehicle" be one which offers a reasonable chance of being successful in light of the particular child and his particular handicap. It does not mean that the selected educational approach or program be the best, optional or ideal choice. It need merely be "suited" to the individual child's needs. John A. V. Hinson, supra. The evidence in the case at bar showed that this condition was being met more than adequately respecting the plaintiffs who had filed the instant action.

Section 402 of the Civil Rights Act of 1964 is said to be one of the simplest, most unambiguous directives ever issued to a government agency. Instruction was given to the U.S. Commissioner of Education to Conduct a survey to determine the lack of availability of equal educational opportunities for individuals by reason of race, color, religion, or national origin in educational institutions in the United States and its possessions. Section 402 pointed forward an examination of the effects of overt racial discrimination in American schools. What it produced instead was a 737 page document that demonstrated not only the ineffectiveness of schools in overcoming the handicaps of poverty and deprivation, but also the fact that no one knows what the phase "equal educational opportunities" or appropriate education means and that, given the conditions of contempory American society it can have no meaning. Education in America is unequal, it is structured to be unequal, and it can at best define its successes by its failures. On the dark side of every conception of "opportunity" lies an equal measure of exclusion and rejection (Peter Schrag, 1968). Excluding the Severe/Profound, Special Education for the minority handicapped is legalized segregation in a systematically discriminatory fashion.

Within our constitutional framework there are many responsibilities as well as rights. We have made many promises to fulfill the rights of the minority individual to an education, and we are making many promises to fulfill the rights of handicapped individuals to an education. There are assumptions however, that the promises made on the fulfilling of the right to an education

for all children include the minority handicapped individual. However, to date real accountability is not in evidence. As special educators and related specialists we have responsibilities to the minority handicapped individuals within the constitutional framework. These responsibilities include:

- The defining of the right to education for the minority handicapped individual

- The provision of professional expertise and knowledge of the minority handicapped individual

- The provision of a system of evaluation and accountability for service rendered to Minority Handicapped Individuals.

- The facilitation of collaboration and interdisciplinary service delivery models.

An Examination of a New Form of Institutionalization

A handicapped student, who is unable to shed his primary handicap of being black, troubles educational and all other institutions or systems. These children affect the linkage of system because they are more different, they trouble educators, politicans, and society in deep, unexplainable irrational ways and the feeling has prevailed - the minority handicapped child would be better somewhere else, not cruelly treated, but out of

sight and mind. Ed Martin in his 1974 Article, "Some Thoughts on Mainstreaming", sites former Attorney General Ramsey Clark, in his memory jogging reflections about the conditions within Indian reservations, the Japanese - Americans in World War II, about the willowbrooks, the jails, about the racially segregated schools. In each case institutions were created for the good of those to be incarcerated, to provide humane treatment, and in each case there was a pattern of neglect, isolation, rejection and ultimate dehumanization of the person, on whose behalf society was acting. While this has not been the case in all of our approaches to serving minority handicapped children in public education, there are insufficient budgets, unqualified teachers, insufficient facilities, lack of materials, the failure to provide effective identification and the out of sight out of mind syndrome that at best can be perpetuated through twelve months in the school house.

Picture the scenario of a new form of institutions to follow the deinstitutionalization normalization movement. Imagine the new institutions as buildings formally called public schools, abiding by the following regulations and Conduct Codes. Twelve months - year - round schools!

- Preference for admission will be given to minority handicapped students labeled behaviorially disorder
- All students will be requried to attend school daily, seven days per week from 8:30 - 6:00.
- Students will return to their homes for one evening snack and a visit with parents prior to reporting to bedrooms for sleeping in their respective homes.

- maintance and purchase of clothing for students as well as medical treatment will be assumed by parents surrogate or agencies.

- Students will not be a burden to the community prior to the age of 21. They will not play on streets or in neighborhoods.

- This model day-institution cannot assure against teacher-burn out, Student burnout of building and facility deterioration as the individual needs of minority handicapped students will take precedence.

To require or mandate twelve months or year round schooling for minority handicapped students will forever give emphasis to the disabling characteristics of these students. Further, year-round schooling serves to threaten the Care of Public Law 93-380 and the mainstreaming concept. And yet, a de-emphasis of the minority handicapped child's disabiling characteristic will diminish the - well - springs of sympathy which is said to feed financial support into services for children with special needs. For these reason and others, there is conflict among parents, advocates, and educators, as all continue the struggle for the rights of the handicapped. The question then becomes, do we maintain the level of attention, given to children that were at one time locked out of educations doors, guiding them through the passage way to the brighter light of daybreak? Or do we continue to create new identities, and building new defective doors providing little protection, yet insuring ultimate distruction.

A handicapping condition does not in itself provide for a homogeneous group needing homogeneous time and programming.

Hobbs (1975) placed an issue into perspective. "Categories and labels are powerful instruments for social regulation and control, and they are often employed for obscure, covert, or hurtful purposes; to degrade people, to deny them access to opportunity, to exclude undesirables whose presence in some way offends, disturbs familiar custom or demands extraordinary effort" (p.11)

Again, a key element of Public Law 93-380 is the requirement that handicapped children be placed for educational purposes in the least restrictive alternative setting. Specifically the law calls for the States to adopt:

(B) procedures to insure that, to the maximum extent appropriate handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling or other removal of handicapped children from the regular education environment occurs only when the nature and severity of the handicap is such that education in regular classes with the use of supplementary aids, and services cannot be achieved satisfactorily (Public Law 93-380, Title VIB Section 612 (d) (13B).

Relationship of This Educational Model to The Community.

To the minority handicapped child, education is more than "schooling in the school house. Even a minority handicapped child must be recognized by and able to communicate with the policeman on the street corner. Many people of good will object to subjecting minority handicapped children to pushing go-carts on the streets, running along the beach, being seen in shopping centers, swimming in neighborhood pools, playing in the parks, frequenting recreation and amusement halls, attending vacation bible school, or becoming gainfully employed during the summer. Some feel it will be harsh and jarring. This is true. The placement of minority handicapped children in school twelve months a year will be kinder, not forcing these children into situations of ridicule. Yet this act of kindness does not convey the unspeakable truth that the minority handicapped child must not be concealed or hidden from the sub-systems of society; these children will have to cross barriers. More barriers than the non handicapped child to get through a life span. The minority

handicapped child cannot learn this fact too late. Therefore education of the minority handicapped child must encompass both educational and community based programming.

Implications for Critique, Review and or Change

The time is now for Special educators to accept the responsibility of developing realistic evaluative and accountability data based systems. Program evaluation must become an automatic and integral part of the operation of any special education program. For the minority handicapped child there must be careful assessment and controlled conditions in order to maximize the probability that learning will occur. It must not be the duty of a judge to decide that regression cannot be recovered or recouped, nor to mandate twelve months of schooling for minority handicapped children with no data base system of support.

Today we are in a difficult and competive position for a full share of community resources for the minority handicapped child. With the threat of a shift of national resources from Domestic to Defense, the development of services for minority handicapped students must proceed in keeping with the general development of all personal services in the community and yet maintain the identity of the handicapped. We cannot afford, as educators, to continue to plan for the education of minority handicapped children in a vaccum. This approach can only result in isolated programs without community support, understanding or backing. In education we have P.L. 94-142, the Education of all Handicapped Children Act. We have economic maintenance support

though SSI and SSDI. We have health care through Medicare - Medicated; other services provided through Title XX, the Social Security Act, special housing programs in HUD, and special transportation provision of the Department of Transportation (DOT). The Presidents' Committee on Employment of the Handicapped is another area of emphasis. The Rehabilitation Services Administration (RSA) the Department of Labor with its Concentrated Employment and Training Act (CETA) Small Business Administration, and Wagner O'Days Programs provide additional policy and support.

There are many fragmented national programs, yet the minority handicapped child will not be afforded access to any if there is no comprehensive policy. The concept of twelve months of schooling is a strain on one system - education, P.L. 94-142. There are approximately 61 separate federal programs which deal with disabled citizen. For the minority handicapped child specifically, and all handicapped children we must capture all resources available, and not go to the courts to plead and pray for segregation and confinement in the school. P.L. 94-142 makes provision for funding coverage from age 0-21. This enables a handicapped child to receive federal support for an additional eight (8) years of schooling as opposed to the now handicapped who attends public school from age 5½ - 18.

A major function of the school is to serve the community. In part, this is done by helping to prepare young people to gain their highest levels of independence and self-sufficiency. Adequate preparation enables an increased number of young people to share the tax burdens, relieves the welfare of clients, helps young people become contributors to positive community and societal functions and lessens the chance that they will become mere consumers. Production, therefore, becomes a cornerstone for concern.

I venture to say that the local education agency does more to develop human potential in young people than any other public agency. A matter of fact is that the schools are asked to perform many functions that they were never designed to perform.

Recent legislation which serves as the basis to generate funds for schools seem to cause an adverse effect, in some instances. Functions are being shifted from other community agencies and the home to the public schools.

Human engineering and the essential need to develop our most important resource - young American people - requires that community agencies and parents being to share responsibility for the formal and informal education of young Americans, especially minority handicapped students.

There is some agreement that there are a few minority handicapped students who require twelve months of schooling but in their cases all schooling need not occur in a school facility. Even with this small number there is confusion as to the need for "schooling" as opposed to a well defined treatment and respite care program during the "schooling" years or age limits.

Twelve months schooling must not become a new form of institutionalization. When minority students spend twelve months in school they are deprived, among other things, of all "True" life, liberty and the pursuit of happiness. Opportunities to learn, earn and grow in THE REAL WORLD. Knowledge of a broad spectrum of community agencies and access to other institutions in daily operations. Opportunities to become capable and to operate in the mainstream of American life. Ultimate independence and self-sufficiency.

If twelve months of schooling is treatment of necessity, I do not believe that the Supreme Court has determined that "treatment" is a right that must be given in return for liberty. It is clear that a harmless person can not be involuntarily institutionalized merely to improve their standard of living or to serve society's objection to eccentric ways or different or obnoxious appearance. Minority handicapped students are also entitled to freedom in the community if they can survive with reasonable safety.

We can say, with a high degree of accuracy, that too many students who find themselves warehoused for twelve months of schooling, often times against their will, are destined to share any combination of unfortunate experiences such as is found in jail(s) and/or prison(s).

> A conservative reflection is that the annual cost to maintain an inmate in a prison is about $25,000. Yet, we long for the day when we can spend the same dollars per annum to PREVENT the incarceration of a young minority person.

Through provision within the Constitution of the U.S., the government through the people plan ways to intervene in the lives and liberty of individuals. This process of intervention may be a benefit to other individuals, to the State or to the nation. The clamor and cry for twelve months of schooling for minority handicapped students is often misdirected. It may enable the government to intervene into the lives and liberty of individuals as the alledged need to help the minority handicapped becomes a matter of compelling concern. There are really two types of claims that can be made for service that is a right one the claim to access, two, the claim to quality. It is in the quality and accountability posture that governmental intervention and assistance is needed.

The School Administrator

The school principal has the following responsibilities in identification, placement, and education of exceptional students.

a. Exerts leadership in the school by ensuring that the total school curriculum is adapted to the needs of individual student before referral to ESE is considered.

b. Monitors the school program to ensure that a diagnostic-prescriptive approach to instruction prevails in all classrooms.

c. Keeps parents informed about the educational progress through planned conferences.

d. Ensures that all community resources are utilized to assist the student and his family.

e. Serves as the LEA representative during the annual review of the IEP.

f. Monitors the student's educational program with the CST and other appropriate personnel and makes adjustments in the program through the placement committee and parent.

The issues related to non-biased assessment and placement of black students and other minorities into classes for the retarded may be studied by task forces at the state level. Grants relating to unmet needs throughout the state should be awarded to districts who wish to explore the issues, problems, and solutions to this problem.

School districts must take definite steps in addressing the issue of need for twelve months of schooling for minority handicapped students.

Child Study Team Concept. With the development and implementation of the Child Study Team concept in each of the schools. All instructional and support personnel working with students must work as a team in identifying all alternative strategies and programs for resolving a student's problems prior to referral, placement and programmming.

This will reduce the number of slow learners who may have been placed into EMR programs. Schools can revamp curriuclum and instruction to meet individual students needs.

Inservice Comprehensive inservice and training programs must be conducted for all support personnel, e.g., school psychologists, exceptional student placement specialists, and visiting teachers. These inservice programs should offer procedures and strategies related to:

- Comprehensive assessment of minority handicapped students, deemphasizing the intelligence score as the primary factor in the placement of students.
- Alternative methods for assessing the adaptive behavior of minority students in the home and community.
- Alternative instructional models for low achievers.

The issues related to the disproportionate number of black students in EMR classes must also be discussed at meetings of schools administrators and staff with affirmative action steps taken.

Review of Records of Borderline EMR Students. A comprehensive review of all students whose IQ's reported are in the borderline range of intelligence must be conducted. All students in need of a comprehensive reevaluation at the time must be assessed educationally. Schcol based personnel must carefully monitor all aspects of the identification and placement of EMR students. Personnel at all levels must be more aware of their specific responsibilities as they relate to this issue.

Alternative Education Model Develop and pilot models whereby borderline minority students are placed into alternative education classes. Provide intensive instruction to meet the individual needs of each student. Pre- and post-testing results should indicate that these models hold promise as an alternative to EMR placement.

The case is made for support of the predominant American values. The force of the value of success is measured by ability. "Fair play", as an american value is based on the analogy between life and a football game -fouling is disgraceful and heavily penalized. To be born black - a minority, and handicapped is eqvated to a Foul in the game of life. Emphasizing the high value of competitiveness we plead honest competiveness. And finally Liberty is another value of high importance to Americans.

The high regard for "liberty", is traditional, and it means essentially that no one can become the vested interest of anyone but oneself. The attempts to justify social discrimination through twelve months schooling for the minority handicapped child in the face of this basic value may be parallel to what Myrda called the American Dilemma or an illustration of organized and systematic rationalization.

It is an educational fact that the maximum benefits to a child are received by placement in a normal an environment as possible. A child has to interact in a social way with its peers and denials of this opportunity during the minor years imposed added lifetime burdens upon the child. (Hairston V. Drosick, 423 F. Supp. 180 (S.D. W. Va. 1976):

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